

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 281

September 10, 1996, 3:41 pm  
Page S-10139 Temp. Record

## CIVIL RIGHTS ACT AND HOMOSEXUALS/Rejection

**SUBJECT:** Employment Nondiscrimination Act . . . S. 2056. Passage.

**ACTION: BILL DEFEATED, 49-50**

**SYNOPSIS:** As introduced and passed, S. 2056, the Employment Nondiscrimination Act of 1996, will make people with certain sexual orientations (homosexual, bisexual, or heterosexual) a protected class under the Civil Rights Act. An employer will be defined as being an employer of 15 or more employees. Declarations are added stating that the Act will not apply to the provision of employee benefits to an employee's partner, that a "disparate impact" case (a case in which an employer has not discriminated but in which the result of an employer's actions are the same as they would have been if he or she had discriminated) will not establish a prima facie violation of this Act, and that quotas and preferential treatment will not be allowed. Religious organizations will be exempt except for their for-profit activities. The Act will not apply to the Armed Forces. The Act will not apply to laws that create special rights or preferences for veterans. The Act will be enforced using the same procedures and penalties as are used for current classes protected by the Civil Rights Act. States will be fully liable for any violations they commit; the Federal Government will be liable for violations that it commits except that it will exempt itself from punitive damages.

**Those favoring** passage contended:

The Employment Non-Discrimination Act is about ending discrimination on the job for homosexuals and bisexuals. No one chooses his or her sexual orientation. If one did, one would never choose homosexuality or bisexuality because throughout history homosexuals have at best been ridiculed and more often have been persecuted and sometimes even killed. Homosexuals have always existed, and recent scientific evidence has found some proof of a biological link.

In the United States, there is an increasing acceptance of alternative sexual lifestyles. We are proud of our fellow Americans for their enlightened attitude. This attitude is part of a natural progression that first gave women the right to vote, and then passed the civil rights laws for minorities, and then recognized the rights of the disabled, and now we believe is ready to recognize the rights

(See other side)

YEAS (49)			NAYS (50)			NOT VOTING (1)	
Republicans (8 or 15%)	Democrats (41 or 89%)		Republicans (45 or 85%)	Democrats (5 or 11%)		Republicans (0)	Democrats (1)
Chafee	Akaka	Johnston	Abraham	Helms	Byrd		Pryor- <sup>2</sup>
Cohen	Baucus	Kennedy	Ashcroft	Hutchison	Exon		
D'Amato	Biden	Kerrey	Bennett	Inhofe	Ford		
Hatfield	Bingaman	Kerry	Bond	Kassebaum	Heflin		
Jeffords	Boxer	Kohl	Brown	Kempthorne	Nunn		
Simpson	Bradley	Lautenberg	Burns	Kyl			
Snowe	Breaux	Leahy	Campbell	Lott			
Specter	Bryan	Levin	Coats	Lugar			
	Bumpers	Lieberman	Cochran	Mack			
	Conrad	Mikulski	Coverdell	McCain			
	Daschle	Moseley-Braun	Craig	McConnell			
	Dodd	Moynihan	DeWine	Murkowski			
	Dorgan	Murray	Domenici	Nickles			
	Feingold	Pell	Faircloth	Pressler			
	Feinstein	Reid	Frahm	Roth			
	Glenn	Robb	Frist	Santorum			
	Graham	Rockefeller	Gorton	Shelby			
	Harkin	Sarbanes	Gramm	Smith			
	Hollings	Simon	Grams	Stevens			
	Inouye	Wellstone	Grassley	Thomas			
		Wyden	Gregg	Thompson			
			Hatch	Thurmond			
				Warner			
						<b>EXPLANATION OF ABSENCE:</b>	
						1—Official Business	
						2—Necessarily Absent	
						3—Illness	
						4—Other	
						<b>SYMBOLS:</b>	
						AY—Announced Yea	
						AN—Announced Nay	
						PY—Paired Yea	
						PN—Paired Nay	

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

of gays and lesbians.

In most States in the country discrimination is still legal against homosexuals. Nine States have outlawed it, and one hundred sixty-six cities and counties have adopted employment anti-discrimination laws, but everywhere else it is still legal to fire someone for being homosexual. One recent survey of 1,400 gays and lesbians revealed that 80 percent of them hide their orientation at work. That fact indicates that discrimination is still widespread. Gays and lesbians know that if they reveal their orientation, they may end up like Cheryl Summerville, who was fired as a cook in Atlanta after 4 years of service when her company adopted an anti-homosexual policy. We believe that the time has come to end this blatant discrimination. People should be judged by how well they do their jobs, not on how they conduct their private lives away from work.

At the same time, we understand that some Senators who are willing to end workplace discrimination to an extent are not yet willing to give the full protections that other groups have been granted. We have therefore limited the scope of this bill in several ways. First, the bill will not require businesses to give health and other benefits to the same-sex partners of their employees. Many big companies like Walt Disney have already courageously taken that step, but we will leave that particular battle for another day. Second, it will not let gays or lesbians file disparate impact claims (under such a claim, an employer that has unequal employment results in hiring minorities can be held liable under the Civil Rights Act, even if those results are unintentional). Third, it will not apply to the non-profit activities of religious organizations. Fourth, it will prohibit both quotas and preferential treatment. Fifth, and finally, it will not overturn the military's "Don't ask, don't tell" policy.

The limited scope of this bill should be enough to win its passage. It will not result in an explosion of litigation; it will result in an end to employment discrimination against homosexuals. We recognize that many people have religious objections to homosexuality, but those objections cannot be allowed to dictate public policy. Eighty-four percent of Americans agree that people should not lose their jobs because of their sexual orientation. Senators should follow the wishes of the American people by passing this bill.

**Those opposing passage contended:**

**Argument 1:**

In the debate on the "Don't ask, don't tell" policy on homosexuals in the Armed Forces, General Colin Powell said: "Skin color is a benign nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument." General Powell was right on target. Current law provides extensive legal protections in employment for people based on benign characteristics such as race, but it does not provide protections for anyone based upon what they do. The bill before us will change that by providing employment protection for some people based upon their sexual practices. We object to this change both because we object to forcing some Americans to embrace behavior which they find morally objectionable and obscene, and because we understand the tremendous practical problems that will arise when an effort is made to enforce this law on one of the most personal of all subjects.

For most people throughout all history, sexual intimacy has been linked with love and has been part of an enduring bond between a man and a woman and has included the obvious purpose of procreation. In the Judeo-Christian ethic on which this nation was built and on which it still rests, sexual intimacy within the bonds of marriage has been considered sacred, and the family has been called the first church. Of course, throughout history there has also always been sexual behavior outside the bonds of marriage and for reasons other than for procreation. For the most part, that other sexual behavior has been disapproved by societies. The degree of disapproval has generally followed the degree to which the behavior deviated from the ideal of a loving, permanent, monogamous relationship between a man and a woman.

Any sexual behavior, whether normal or aberrant, evokes strong emotional reactions in people. Such reactions are a defining characteristic of what it is to be human. The sexual drive is tremendously strong, and, as a matter of the deepest moral convictions, of faith, most people throughout history have strongly opposed certain sexual behavior, including homosexual behavior. The highly secularized elitist classes in the United States--the rich, the powerful, the famous--do not share the sexual mores of the American people. No one should find this fact to be surprising. Ruling classes in every society have generally been much more likely to approve of and engage in sexual practices that the citizenry deemed immoral. In the United States, homosexual behavior is concentrated in the wealthiest and managerial classes--the average per capita income for homosexuals is \$36,000 while it is only \$12,287 for the general population, and 49 percent of homosexuals hold managerial or professional positions while only 18 percent of the general population hold such jobs.

The ruling elites have now proposed this bill that will make it illegal to discriminate in employment against homosexuals or bisexuals. They want their moral standards (or lack thereof) to apply in every workplace in America, despite the moral objections of employers and other employees. In the moral vision of the supporters of this bill, homosexuality is the moral equivalent of heterosexuality so they believe that it is unjust to treat one differently than the other. For most Americans, though, homosexuality absolutely is not the moral equivalent of heterosexuality, and for millions it is fundamentally evil. Our colleagues are basically telling Americans that when on the job, they must act as though they believe that there is a moral equivalence. Our colleagues say that the

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American people will still be able to hold whatever religious beliefs they wish. They can go to a religious service, and profess that homosexuality is a sin; they just will not be allowed to say so once they leave and go to work. Once at work, they better smile, or else they will be creating a hostile work environment and they will be sued under the Civil Rights Act. People whose religious beliefs tell them that church is not a building but is a body of believers will have their religious rights denied.

Such suits are only one of the many practical problems that will arise from protecting homosexual conduct under the Civil Rights Act. First, most parents do not want homosexuals in positions where they will serve as role models to their children. If this bill passes, the Boy Scouts of America will instantly lose its longstanding legal battle with homosexuals who want to serve as Scout Masters. Second, it will provide inadequate protections for religious institutions. The bill states that nonprofit activities of churches, mosques, and synagogues will be exempt, but for-profit activities, such as religious radio stations or bookstores, will not. Third, it will give the EEOC the power to demand data from businesses on the sexual orientation of their employees. Today, under title VII, the EEOC asks numerous employers to provide statistics on the racial, ethnic, and gender composition of their work forces and new hires. This bill will fully apply title VII. Those Senators who think that title VII will never come into play because this bill does not allow disparate impact suits are wrong. The EEOC frequently collects statistics to prove cases of intentional discrimination, including in pattern and practice cases. When employers are charged, they are going to need evidence that they have hired homosexuals. They are going to have to quiz all their employees on their sexual practices. Are our colleagues ready to say that everyone's sexual practices are now going to be put into employment record databases? Fourth, knowing that their best chance of winning a suit is to show that they have proportional numbers of homosexual employees, employers will naturally try to hire them by strict quotas, just as almost all large employers now do for other protected classes. However, employers will have a dilemma in that the estimated number of homosexuals in the general population varies widely, going from 1 percent to about 10 percent. Further, the number clearly varies by region, depending on the degree of acceptance given to homosexual practices. Even if they hire by quotas, and adopt affirmative action programs, they might still be found guilty if the EEOC charges them with deliberate discrimination in a case and then decides that they have less than a proportional population. Fifth, if the EEOC finds that a company has intentionally discriminated, it will be allowed to force a company to adopt an affirmative action program as a remedy, as it is allowed to do for other protected classes under title VII. Our colleagues tell us that the bill specifically forbids preferences and quotas, but that language is not worth the paper on which it is printed. We were given the same assurances when the Civil Rights Act passed in 1964. Then-Senator Hubert Humphrey proposed to eat the pages of the Congressional Record one by one if quotas or preferences resulted from title VII. If our colleagues make the same promise now, and this bill passes, we guarantee that we will soon be sending them a knife and fork so they can eat their words.

We do not need to go down this road. Most Americans do not think homosexuals should be fired because of their sexual practices, as our colleagues have stated, but what our colleagues have not stated is that the same Newsweek poll they cited also said that only 41 percent of Americans think there should be "special legislation to guarantee equal rights for gays," and that when asked if the country had already made enough of an effort "to protect the rights of gays and lesbians," 26 percent agreed, 27 percent said no, and 40 percent said that the effort had gone too far. Homosexuals are already among the wealthiest and most influential of all Americans. We think the American people are right--homosexuals do not need to be treated as a special class under the civil rights laws. Therefore, we strongly urge the rejection of this bill.

#### Argument 2:

Employers should not discriminate against homosexuals in the workplace, but using the flawed Civil Rights Act to stop that discrimination would be a huge mistake. If the bill were limited to merely requiring reinstatement of one's job or simply back pay, as the original Civil Rights Act provided, we could support it, but as it is written, with a few exceptions, all of the heavy fines and requirements that have turned the Civil Rights Act into a litigious nightmare will be imposed. We need to have employees and employers working together. We do not want this bill to be used by homosexuals to seek enormous punitive and compensatory damages for perceived slights. We think the main result of passing this bill would be endless litigation that would hurt productivity and cost jobs for all people, whatever their sexual orientation. We therefore urge the rejection of this bill.